* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CS(OS) 1332/2006**

Pronounced on : 22.09.2009

SMT. SUSHILA KHANNA & ORS. ..... PLAINTIFFS

Through Mr. N.S.Dalal, Advocate.

versus

SHRI GAJE SINGH & ORS ..... DEFENDANTS

Through None

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1.	Whether the Reporters of local papers may be allowed to see the judgment?	Yes
2.	To be referred to Reporter or not?	Yes
3.	Whether the judgment should be reported in the Digest?	Yes

HON'BLE MR. JUSITCE S.RAVINDRA BHAT (Open Court)

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1. The plaintiffs seek permanent injunction against the defendants to restrain them from dispossessing them (plaintiffs) and disturbing their (palinitffs') peaceful possession from the land at Khasra No. 31/12 (4-15), 19/1 (3-4), 31/4 (4-16), 5/1 (4-12), 31/2/2 (2-8), 3 (4-16), 7/2 (2-8), 31/8 (4-16), 9 (4-12) and 28 (0-4), total admeasuring 36 bighas 11 biswas situated in the revenue estate of Village Nangli Sakrawati, Delhi (jointly referred to as the "suit lands").

2. The second, third and fourth plaintiffs are sons of the first plaintiff. The suit states that the first plaintiff is the owner and in possession of the land forming part of Khasra No. 31/12 (4-15) and 19/1 (3-4), total admeasuring 7 bighas and 19 biswas; the second plaintiff is the owner and in possession of Khasra No. 31/4 (4-16) and 5/1 (4-12) total admeasuring 9 bighas and 8 biswas; the third plaintiff is the owner and in possession

of Khasra No. 31/2/2 (2-8), 3 (4-16) and 7/2 (2-8) total admeasuring 9 bighas and 12 biswas; the fourth plaintiff is the owner and in possession of Khasra No. 31/8 (4-16), 9 (4-12) and 28 (0-4) total admeasuring 9 bighas and 12 biswas. The plaintiffs claim to have purchased these lands in 1982 and say that they are in cultivatory physical possession of the suit lands. It is averred that their names exist in the revenue records since the year 1983-84. The Khasra Girdawari also shows the possession of the plaintiffs over the suit lands. The plaintiffs, on the basis of Khatoni, claim to be the recorded Bhoomidars of the suit lands and that the Khasra Girdawari shows the crop being sown over the land in question. They also claim to be operating dairy business from a part of the suit lands and that for the purposes of cultivation, the plaintiffs sometimes employ labourers as well.

3. It is alleged that the plaintiffs had employed the third defendant (Shyam Lal) as a "Chowkidar" for the suit lands, to look after the land and protect the crop; other than that he had no concern with the suit lands. Shyam Lal, with malafide intentions, tried to manipulate the records pertaining to the suit lands by applying to the revenue authorities, on 28.08.2005, to get his name entered in the revenue records in respect of the suit lands, claiming that he become the bhoomidar on the basis of his cultivatory possession and that the provisions of the Delhi Land Reforms Act support his entitlement. The plaintiffs had informed the same to the concerned authorities. Shyam Lal had even filed a frivolous suit for injunction against the plaintiffs before the Ld. Civil Judge, Delhi. Shyam Lal, before the Ld. Civil Judge, claimed to be in peaceful cultivatory possession of the suit lands on account adverse possession since 1983. On 01.06.2006, while disposing Shyam Lal's application under Order XXXIX Rules 1 and 2, the Ld. Civil Judge recorded a *prima facie* finding that the third defendant had no concern over the suit lands and that the plaintiffs were the owners and in possession. It is alleged that, aggrieved by this, the third defendant, in connivance with the first and second defendants, (who are the local property dealers), is attempting to dispossess the plaintiffs from the suit lands. On 14.06.2006, the first and second defendants visited the suit lands along with four-five persons and held out threats to dispossess the plaintiffs. The plaintiffs allege having approached the local police for lodging of a complaint, but they were spurned with a direction to approach the court.

4. By order dated, 28.06.2006 and *ad interim ex-parte* injunction was granted by this Court against the defendants. On 22.08.2006 the first and second defendants were proceeded *ex-parte* and on 11.01.2008, the third defendant too was proceeded *ex-parte* and the plaintiffs were directed to file their *ex-parte* evidence by way of affidavit along with original documents. On 02.09.2009 the third plaintiff, Sh. Rishi Khanna (PW-1), filed his affidavit in evidence on behalf of the plaintiffs, which is Ex. PW-1/A. In this view, only the facts urged by the plaintiffs and established through the evidence by way of affidavit shall be considered for adjudication of the suit. The statement of PW-1 was recorded on 07.09.2009 whereby he tendered his affidavit in evidence in examination-in-chief and placed reliance upon Ex. PW-1/1 to Ex. PW-1/17, in support of the suit averments.

5. The affidavit discloses that the plaintiffs had purchased their respective shares in suit lands from one Jallu S/o Mangtu, the erstwhile owner/ bhoomidar, through separate registered sale deeds dated 29.03.1982 (Copies placed on record as Ex. PW-1/1, Ex. PW-1/2, Ex. PW-1/3 and Ex. PW-1/4), entries in this regard had been made in books maintained at the office of Sub-Registrar, Delhi. The originals of these sale deeds were produced in court for inspection and thereafter, returned. Copy of the Khatoni for the year 1987-1988, showing the plaintiffs as recorded bhoomidars of the suit lands, is placed on record as Ex. PW-1/5. Copies of the Khasra Girdawari for the period 2004-2005 and 2005-2006, showing the crop being sown over the suit lands, is also placed as Ex. PW-1/6 and PW-1/7, respectively. Ex. PW-1/8 to Ex. PW-1/16, are copies of Khasra Girdawaries for various periods in the names of individual plaintiffs. The plaintiffs claim to have made improvements over the suit lands and installed a tube-well for the purpose of irrigating it. The plaintiffs have also filed copies of bills issued in respect of the against the electricity connection for operating the tube-well, issued to the second and fourth plaintiffs, as Ex. PW-1/17. They state that only a bhoomidar can seek indulgence of the Court in view of the bar under Section 185 of the Delhi Land Reforms Act, 1954, the defendants, not being bhoomidars and having no concern with the suit lands whatsoever, have no rights over the suit lands. The Ld. Civil Judge has, in his order dated 01.06.2006, while dismissing the third defendant's application, already recorded a *prima facie* finding

against him and in favour of the plaintiffs. A copy of this order has also been placed on record.

6. Ex. PW-1/1, PW-1/2, PW-1/3 and PW-1/4 are Sale deeds dated 29.03.1982 executed in favour of the first, second, third and fourth plaintiffs by the said Jallu S/o Mangtu for various sums of money. The copy of Khatoni, i.e. Ex.PW-1/5 shows that the period of 1983-1984, as the date of commencement of the Bhoomidari right in favour of the first, second and third plaintiffs. The Khasra Gidawari of Village Nangli Sakrawati Tehsil & District Najafgarh, Delhi for the period 2004-2005, i.e. PW-1/6 contains notings as to sowing of crops in Kharif, Rabi and Dofasli seasons, similarly Khasra Girdawari for the period 2005-2006, i.e. Ex.PW-1/7 also shows sowing of crops over first and second plaintiffs' share of the suit lands during the Kharif season. Ex. PW-1/8 to PW-1/16 are also copies of Kahsra Girdawari, for various periods in the names of individual plaintiffs with regard to their respective shares in the suit lands. Ex. PW-1/17 are original electricity bills issued in the names of second (for December, 2002, August, 2004 and February, 2006) and fourth (for May and July, 1998) plaintiffs. In order dated 01.06.2006, the Ld. Civil Judge observed that:

> *"Plaintiff alleged that he is in possession of suit property on account of adverse possession since 1983 and cultivating the land. On the other hand it is the case of the defendant that the plaintiff was an employee of the defendants and kept at the land alongwith other employees for cultivating purposes.*
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> *Now, Khasra Girdawaris are prepared by the concerned patwari after physical inspection of the land. Had it been the case of the plaintiff that he has been cultivating the land since 1983, then the patwari who had gone for physical inspection of the property must have termed this fact in the Khasra Girdawris.*
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> *No such facts have been mentioned and on the contrary, the cultivator of different crops are shown to be defendants. Now the land in question appears to be a vacate land, devoid of any construction. So, as per the Hon'ble Supreme Court, the person whose name appears in the Khasra Girdawris is considered to be in possession of the said land."*

The Ld. Civil Judge further observed:

> *"I have gone through the application dt. 04.04.05 according to which plaintiff had sought that no NOC be issued and thereafter a letter dated 28.08.05 in which he has sought that he name be included in Khasra Girdawari. Before this letter the plaintiff had not sought to get his name mutated in the revenue records and for the first time on 28.08.05 he had sought so. This also shows that the plaintiff was not in independent possession of the property. This further*

forfeits the stand of the defendant that he was employed by him at the suit property to do the work of cultivating on behalf of the plaintiff"

7. The Court has considered the evidence led by the plaintiffs in support of their claim. The Khatoni is the register of all persons cultivating or otherwise occupying land in a village. It is a document prepared as part of record-of-right in every estate containing entries regarding ownership, cultivation and various rights in land. A Khasra Gidawari is a register of harvest inspections conducted by the patwari containing facts regarding crop grown, soil classification, cultivable capacity of the cultivators. Ex. PW-1/1 to 1/4, copies of the registered sale deeds executed in their individual names for their respective share in the suit lands, and Ex. PW-1/5, copy of Khatoni, in which the date of commencement of the Bhoomidari right in favour of the first, second and third plaintiffs is noted as 1983-1984 amply establish the plaintiffs' title over the suit lands. The notings in the copies of the Khasra Girdawaris, placed on record of the suit as Ex. PW-1/6 to 1/16, regarding the sowing of crops in different seasons reveal that the plaintiffs were in possession of and cultivating the suit lands. The evidence led has remained uncontroverted, since the defendants never moved this Court after being proceeded *ex-parte*. On a reading of the order dated 01.06.2006 of the Ld. Civil Judge, made in Shyam Lal's suit against the plaintiff, whereby his application under Order XXXIX Rules 1 & 2 was dismissed, it is clear that even the Ld. Civil Judge, before whom evidence was led by Shyam Lal, had his own doubts as to the veracity of that suit. In these circumstances, the court is of the view that the plaintiffs have been able to establish their lawful possession of the suit lands, and at the same time, that the defendants do not have any interest in the said suit lands. The Court is also of the opinion that the defendants had attempted to disturb the plaintiffs' possession. In view of these findings, the plaintiffs are entitled to the reliefs claimed.

8. In view of the above discussion, the suit is entitled to succeed; let a decree for permanent injunction, in the terms sought for, by the plaintiffs, be drawn. The plaintiffs are also entitled to costs; counsel's fee is quantified at Rs.30,000/-.

September 22, 2009 (S.Ravindra Bhat)

Judge